

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	3:09CR52-7
)	JUNE 7, 2010
vs)	
)	
ASDRUBAL RODRIGUEZ CORREA,)	
)	
Defendant.)	
_____	/	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE FRANK D. WHITNEY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE UNITED STATES: STEVE KAUFMAN, ESQ.
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FOR THE DEFENDANT: RANDOLPH M. LEE, ESQ.
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1 **MONDAY, JUNE 7, 2010**

2 (Court called to order at 2:00 p.m. and
3 defendant present in courtroom.)

4 (Spanish-language interpreter, Jackie Gonzalez,
5 interpreting for Mr. Correa.)

6 THE COURT: Good morning.

7 We're here in United States v. Correa, case
8 3:09CR52, for the defendant's sentencing. I want to welcome
9 Mr. Lee into the courtroom.

10 MR. LEE: Pleasure to be here, Your Honor. Thank
11 you.

12 THE COURT: And Mr. Kaufman has been here all
13 morning. We have been sentencing the defendant's
14 co-conspirators in this case all morning, so the Court is
15 well acquainted with the facts of this case, both from the
16 sentencings this morning as well as from the trial back in
17 September.

18 The defendant was found guilty by a jury of his
19 peers on September 29th. He was found guilty of conspiracy
20 to possess with intent to distribute marijuana, using and
21 carrying a firearm during and in relation to a drug
22 trafficking crime, possession of a firearm by an individual
23 with a prior violence conviction, and possession of a
24 firearm by illegal alien.

25 After the defendant's conviction, the defendant's

1 case was referred to the United States Probation Office for
2 the Presentence Investigation and Report. The Court has
3 received a copy of that report. I would like to ask the
4 defendant if he'd stand up briefly.

5 Sir, have you received a copy of the United States
6 Probation Office's final Presentence Investigative Report?

7 DEFENDANT CORREA: (Through interpreter) Yes.

8 THE COURT: Have you had someone translate this
9 report for you?

10 DEFENDANT CORREA: Yes.

11 THE COURT: Do you understand this report?

12 DEFENDANT CORREA: Yes.

13 THE COURT: Have you had an opportunity to go over
14 the report with Mr. Lee, your attorney?

15 DEFENDANT CORREA: Yes.

16 THE COURT: And has Mr. Lee answered all your
17 questions about this Presentence Report?

18 DEFENDANT CORREA: Yes.

19 THE COURT: Sir, you may sit back down.

20 MR. LEE: For the record, I did that through a
21 translator. I did not communicate directly in Spanish.

22 THE COURT: Thank you, Mr. Lee.

23 Mr. Lee, from my review of the record you have one
24 outstanding objection to the Presentence Report.

25 MR. LEE: I do, and it really kind of follows I

1 think, Your Honor, the objections we filed at trial
2 regarding the 404(b) matter.

3 THE COURT: And I was thinking of the same
4 analogy.

5 MR. LEE: You know, so that really is the thrust
6 of the objection, more to reserve it for appellate review,
7 404(b). I didn't want to waive that.

8 THE COURT: I appreciate that.

9 Well, the Court believes the law is that any
10 evidence foreseeable to defendant of other drugs besides the
11 drug of conviction can be considered in the Guideline
12 calculation as to the quantity of drugs sold so long as
13 there's sufficient evidence by a preponderance of the
14 evidence.

15 Mr. Kaufman, anything you would like to add to the
16 evidence with regard to cocaine?

17 MR. KAUFMAN: To add in terms of evidence?

18 THE COURT: Right.

19 MR. KAUFMAN: No, Your Honor. I think that the
20 trial testimony from the cooperators fully satisfies the
21 fact that the cocaine conspiracy was intertwined with the
22 marijuana conspiracy, and that Mr. Correa had previously
23 used firearms to watch over cocaine loads and that's
24 consistent with what his responsibility was for the
25 marijuana in this case.

1 THE COURT: Well, let me ask you, you used the
2 phrase "the cocaine conspiracy was intertwined with the
3 marijuana conspiracy."

4 MR. KAUFMAN: Well, Your Honor, I shouldn't --

5 THE COURT: Let's be careful about our words. Was
6 it one big conspiracy that had two drugs and you charged
7 marijuana because the government -- or the grand jury felt
8 there was sufficient evidence beyond a reasonable doubt that
9 you could convince a petite jury and you didn't charge
10 cocaine.

11 MR. KAUFMAN: Well, if I may, Your Honor, first of
12 all, you are correct, it was one drug conspiracy, and the
13 objects of the conspiracy were cocaine and marijuana. So it
14 is one conspiracy.

15 And so I didn't intentionally and correctly use
16 "intertwine" in terms of the drugs, but it was one
17 conspiracy. But with regards to the way it was charged,
18 really the reason why it came about that way was when this
19 load of marijuana came in, we had no historical information.
20 It was charged because that's what we were aware of. We
21 were aware of the drugs in hand from the day of the arrest,
22 as well as the firearms that were from the day of the
23 arrest, and then we were aware, for example, Mr. Correa had
24 illegally re-entered the country after the prior conviction
25 and was disqualified from possessing any firearms.

1 But during the course of debriefings and
2 especially, really, in pretrial preparation sessions, we
3 learned the full breadth of the cocaine involving all the
4 people here. And, in fact, the marijuana was kind of
5 something -- a new part of the conspiracy; that they had
6 been basically more a cocaine trafficking group with people,
7 and that the marijuana was more of a recent thing. It's
8 more of a kind of an opportunity for the group.

9 THE COURT: What you're saying there is that the
10 marijuana was a newer drug in the conspiracy. I don't
11 recall -- that doesn't mean it wasn't there -- I don't
12 recall any evidence by any of the witnesses as to that. But
13 if I don't recall, point me to a witness that actually said
14 the first drug was cocaine, and marijuana came along later.
15 Because I think that's significant that -- in the Court's
16 analysis.

17 MR. KAUFMAN: Well, I can say that, for example,
18 Mr. Bayona, Jose Bayona had stated that there were prior
19 purchases of cocaine, and that there was this individual,
20 Johnny, who was the source and was also related to the
21 marijuana on the date of the arrest. That Johnny had been a
22 source of supply for kilograms of cocaine in the past. And
23 that Mr. Bayano stated that he knew that Correa knew that
24 Anthony Monroe was buying cocaine from this same person,
25 Johnny. That Correa had watched over two prior loads of

1 cocaine that Johnny had gotten from California or Phoenix.
2 And that the total amount of those cocaine loads was
3 somewhere between 15, 20 kilos. So we're talking about very
4 significant amounts. And that was his testimony related
5 to -- I don't remember if you remember when he described a
6 horn, that was the term, "a horn," was the term for the
7 AK-47 because of the shape.

8 THE COURT: Yeah, I do remember that.

9 MR. KAUFMAN: So that was not only debriefing, but
10 in his trial testimony.

11 With regard to -- let's see. Your Honor, I'm
12 looking through right now just debrief reports. And for
13 example, Mr. Manzanarez talked about an individual that he
14 had been receiving cocaine from. He talks about 13 to
15 14 kilograms from the gato, Spanish for "cat," who he had
16 been dealing with for two to three months.

17 THE COURT: Well, I've reviewed my notes for the
18 sentencing hearing from the trial, and of course, I read the
19 Presentence Report. There's that the -- the evidence in the
20 record from the trial and from the Offense Conduct section
21 of the Presentence Report does show by preponderance of the
22 evidence that cocaine was clearly one of the drugs involved
23 in this conspiracy, and that is a finding of fact of the
24 court. It was the issue whether that this started as
25 cocaine conspiracy and morphed over to marijuana and was

1 something that was new to me. But I don't need to make that
2 ruling. It doesn't make any difference, I guess, which drug
3 came first, it was just whether both drugs were involved in
4 the conspiracy by a preponderance of the evidence for
5 purposes of Guidelines calculations.

6 MR. KAUFMAN: I have might add for the record
7 maybe that Gasper Benevides, his debriefing report, and I
8 believe --

9 THE COURT: I've got in my notes on what he
10 testified to at trial. He specifically testified to both
11 drugs.

12 MR. KAUFMAN: And in fact, according to our
13 information, I can't recall the trial testimony, but in his
14 debrief, he stated when he came to the United States, it was
15 for the purpose of selling cocaine. And I don't know if we
16 went into that much detail at the trial, but that was as far
17 back as 2005. It was a different source of supply at the
18 time, but that was his whole purpose for coming in the first
19 place. So I think that it predominantly was cocaine. I
20 seem to recall --

21 THE COURT: But Mr. Correa, the defendant, did not
22 need Mr. Gasper Benevides until 2008, according to my notes,
23 that's I guess because of the alleged role -- I shouldn't
24 say alleged because the jury found him guilty -- but the
25 role of this defendant in this conspiracy was as a security

1 man. Right?

2 MR. KAUFMAN: Yes, sir.

3 THE COURT: As a guard. And that's why he was in
4 possession of the firearms.

5 Anything else from the government on the cocaine
6 issue?

7 MR. KAUFMAN: No, Your Honor.

8 It's interesting, you had mentioned case law. I
9 just thought it would be interesting, I don't know if the
10 name "Massias," M-A-S-S-I-A-S --

11 THE COURT: Colon Messiah. Jamaica C. Oh, I know
12 that trial very well since I was sitting or standing exactly
13 where you are standing right now.

14 MR. KAUFMAN: Yeah, I saw that when I was doing
15 case law research. It just so happened your name was
16 mentioned in that role. That's a case that supports the
17 inclusion of the cocaine as a legal matter for purposes of
18 sentencing.

19 THE COURT: I thought there the district court --
20 it was a visiting judge from the Middle District of
21 Tennessee -- had held me, as an AUSA, to cocaine only
22 because cocaine was what was charged in the conspiracy, but
23 the evidence at trial was every ounce of cocaine, every gram
24 of cocaine was cooked into crack. And I argued that
25 sentencing should be based on crack, not cocaine. The

1 district court disagreed, and the Fourth Circuit reversed
2 the district court and resentenced the defendant to a crack
3 level instead of a cocaine level.

4 I mean it's very analogous in the sense that it
5 was a drug different for purposes of Guidelines calculations
6 then the drug charged in the indictment. That's right on
7 point. I agree with you there. The drugs were different
8 there.

9 MR. KAUFMAN: Yes, Your Honor.

10 THE COURT: I know that case very well.

11 Mr. Lee, you might have been -- do you remember
12 the Consort Inn defendants. I'm sure you represented one or
13 two of them.

14 MR. LEE: You have a much better memory. I can't
15 remember what I did yesterday some days, but they all blend
16 in after a while.

17 It was interesting to hear the exchange of case
18 law and things like that. Yet the law does change from time
19 to time, if the Court will allow me to briefly, not rebut
20 but respond to what the government has --

21 THE COURT: Absolutely. I was going to allow
22 you that.

23 MR. LEE: My point in filing the objections was
24 really this: To preserve what we did at trial.

25 THE COURT: Right.

1 MR. LEE: My recollection is that I filed
2 objections or requested instruction, I think, on multiple
3 conspiracies, kind of dovetailed with whether it was
4 marijuana or cocaine.

5 THE COURT: And I believe -- I did include that
6 instruction.

7 MR. LEE: I believe you did.

8 THE COURT: Because I don't think Mr. Kaufman
9 wanted me to, but I thought it was an issue the jury needed
10 to decide, and I think they did decide by returning the
11 verdict they did.

12 MR. LEE: I wouldn't concede that --

13 THE COURT: I understand that. I understand
14 you're not conceding that, but that would be logical
15 conclusion they conclude it would be one conspiracy.

16 MR. LEE: That would be a logical. It's not the
17 one we would like but it would be a logical conclusion.

18 And I really can't respond about what Mr. Kaufman
19 has said about the facts of the case. For me the objection
20 hopefully comes down to what was the conspiracy for which
21 Mr. Correa was indicted on which he was found guilty. I
22 contend it was a marijuana conspiracy. At that point the
23 sides break down.

24 I would contend that his involvement foreseeably
25 was for marijuana. He may have been involved in other

1 matters but those were outside the conspiracy. And again
2 it's a question of fact for the Court to find ultimately. I
3 made the objection but as we all know, the sentencing law
4 seems to be changing rapidly, and with two, three new
5 Supreme Court justices, I don't know where we'll be in a
6 two, three years.

7 THE COURT: No. That's very prudent. And I agree
8 with you preserving your client's rights.

9 MR. LEE: Yes, sir.

10 The other side is, and this is more of an
11 editorial comment, but over the years it just strikes me --
12 and I'm aware of the Tenth Circuit case in *Singleton*, but
13 when the government is allowed to bring in facts and
14 evidence by offering 5Ks and downward departure motions,
15 almost as a matter of due process, that puts the defense at
16 a disadvantage because we can't bring in witnesses, you
17 know, who are --

18 THE COURT: Who are not cooperating.

19 MR. LEE: Exactly.

20 THE COURT: The others, those alleged to be
21 co-conspirators who were charged but are denying their
22 involvement.

23 MR. LEE: That's right. So we can't bring in
24 witnesses who are -- you know, that are antithetical to what
25 Mr. Kaufman is because we don't have that power and that

1 authority. And I just offer that editorial because it's not
2 something we can do about that today. I'm not asking the
3 Court to rule upon that because we're not there yet.

4 THE COURT: No. Although I've stood and sit where
5 Mr. Kaufman now sits, I have stood and sat where you now are
6 standing, so I've seen both sides of the prosecution and
7 defense and their burden that each has, and it makes it -- I
8 think it makes for a very fair system because we have this
9 adversarial system with strong advocates from each side.

10 MR. LEE: The system is fair, but I feel like the
11 relative power positions of the parties are somewhat stilted
12 because as a defendant, we can't bring witnesses who would
13 exonerate my client and give that person, the witness, a
14 downward departure for telling the truth, although I would
15 opine politically that the government benefits just as well
16 by the exoneration of the defendant as by conviction, and
17 substantial assistance and cooperation should even be that
18 which exonerates somebody, but the law, it's not there yet.
19 May never be.

20 THE COURT: I do believe there are times that the
21 government will dismiss charges against an alleged
22 co-conspirator; that because of the cooperation of other
23 co-conspirators, they learn that the co-conspirator that has
24 been -- who is charged as a co-conspirator really isn't
25 involved in conspiracy, but just happens to be an associate

1 or friends of the conspirator. So I have seen defendants --
2 charges dismissed because of substantial assistance by
3 others.

4 MR. LEE: And I have, too. I'm not maligning the
5 government. I've seen that throughout my 20-plus years of
6 practice, very much so. But when you start splitting hairs
7 on whether a defendant is involved in a conspiracy within a
8 certain time frame, over a certain drug, then I think it
9 becomes, really, much more of an equal playing field, with
10 all due respect. But it is what it is.

11 I have nothing honestly to point to suggest that
12 Mr. Kaufman's witnesses are prevaricating or lying,
13 indulging or minimizing anything.

14 THE COURT: I appreciate that, Mr. Lee. Thank
15 you.

16 MR. LEE: Yes, sir.

17 THE COURT: For the reasons previously stated, the
18 objection to including cocaine as a drug in the drug amount
19 calculations is overruled based on current state of the law
20 and based on this Court's finding by a preponderance of the
21 evidence that cocaine was involved in this conspiracy.
22 Although cocaine is not referenced in the grand jury Bill of
23 Indictment, and the issue of cocaine was not sent to the
24 jury as to a drug amount -- I guess the marijuana -- was the
25 marijuana included as a drug amount?

1 MR. KAUFMAN: Marijuana was 100 kilograms or more.

2 THE COURT: It had to for the statutory minimum
3 application. And the jury did find 100 kilograms or more.
4 And, of course, that finding of fact by the jury only
5 applies to the statutory minimum. It does not apply to the
6 Sentencing Guidelines.

7 All right, then the Court will adopt the
8 information contained in the Presentence Report for the
9 purposes of applying the Guidelines.

10 In the instant case, the Guidelines provide for an
11 offense level of 34, Criminal History Category II, and a
12 Guideline sentencing range on Counts One, Five and Six of
13 168 to 210 months, and in addition, Count Four, the 924(c),
14 a statutory sentence of 60 months consecutive to whatever
15 the Court sentences the defendant on Counts One, Five and
16 Six.

17 Do the parties agree that based on the Court's
18 ruling that cocaine is included in the drug amount
19 calculation that those are the appropriate advisory
20 Guidelines, and there is the statutory consecutive sentence
21 of 60 months?

22 MR. LEE: I would agree with the Court's
23 conclusions, just to make sure we're building a good record,
24 I would respectfully renew my objections, but I agree with
25 the Court. That's correct.

1 THE COURT: Your objection to cocaine being
2 included is preserved.

3 MR. LEE: Yes, sir, but otherwise is, you know,
4 otherwise the applicable Guideline range, and statutory
5 parameters as the Court states them.

6 THE COURT: All right. Mr. Lee, I'll hear from
7 you on behalf of your client.

8 MR. LEE: Your Honor, I really would just argue
9 for a sentence within the Guideline range and would
10 respectfully ask the Court to consider a range at the low
11 end of the Guidelines. There really isn't much more I can
12 or probably should say for reasons that are known to me, but
13 would ask the Court to consider a low end Guideline range.

14 THE COURT: All right. Thank you very much.

15 Mr. Correa, you have the right to address the
16 Court if you so chose.

17 DEFENDANT CORREA: (Through interpreter) The only
18 thing I have to say is I'm sorry for what has happened, and
19 it's all in your hands now for you to give me the sentence.

20 THE COURT: All right. Thank you very much, sir.
21 All right. You may sit down. Mr. Kaufman.

22 MR. KAUFMAN: Thank you, Your Honor.

23 There's not too much more to say. Your Honor
24 heard the trial testimony. But we do submit that in the
25 range of 168 to 210 months. We're not asking for an upward

1 departure, but we are asking for the high end of the range.

2 Mr. Correa is not just -- was not just involved in
3 this drug trafficking offense and the weapon man, the gunman
4 for it. I note when one looks at his history and where he's
5 going after this, we have, for example, in 2003, he has an
6 assault involving a traumatic condition, with the way it's
7 worded, and an assault of force likely to produce great
8 bodily injury. So his past violence is catching up with him
9 once again in terms of using weapons in drug trafficking to
10 include an assault rifle.

11 And ultimately, Your Honor, we have been in
12 contact, very close contact in the past with the California
13 authorities, and they are preparing to bring murder charges
14 against Mr. Correa. So his past and his future or linked to
15 this instance crime, therefore we do ask for 210 months.

16 THE COURT: Let me ask you before you go into what
17 you're proposing: To what extent am I permitted to use a
18 hearsay reference by a law enforcement agency in California
19 that they are intending to bring murder charges?

20 MR. KAUFMAN: Well, Your Honor, I don't think that
21 that's necessarily the be all, end all for the purposes of
22 sentencing Mr. Correa. I think the facts of the case merit
23 it, and I think it's relevant in terms of his prior
24 conviction showing that it's not just a one off; that he
25 was -- the gunman, he has a prior record for crime, and

1 there's an allegation -- and I don't even know what the
2 status of any charging is -- I know they were going through
3 the process of obtaining DNA for the purpose of their
4 prosecution. I believe that while Mr. Correa was in
5 Gastonia jail, they obtained some DNA to connect him to
6 various pieces of evidence that would corroborate the
7 testimony as well. I don't know what his status is so I
8 would not put great weight on it, Your Honor. I think you
9 are permitted to the consider anything that you consider
10 relevant for sentencing purposes.

11 THE COURT: Well, as Mr. Lee is pointing out, for
12 the last two years, 18 months, we've had some stability in
13 sentencings. But, of course, in the last three to
14 six months in the Fourth Circuit, it's become clear that the
15 Fourth Circuit is very concerned about district courts
16 properly following sentencing procedure from the Supreme
17 Court, and properly doing a substantive analysis of the
18 sentencing factors. And because of that kind of oversight,
19 the proper oversight, I just want to make sure I know what I
20 can consider and not consider in sentencing factors
21 analysis.

22 MR. KAUFMAN: I believe you could consider it,
23 Your Honor. Like I say, if Your Honor says you don't even
24 want to consider it, I think the fact he has a very serious
25 assault in his past, along with the types of the weapons he

1 possessed in the instant crime and what his role were, those
2 in and of themselves shows dangerousness and would merit the
3 high end, so Your Honor doesn't even need to consider the
4 factual, the pending matters in California.

5 THE COURT: I appreciate that. Thank you very
6 much, Mr. Kaufman.

7 MR. LEE: I'll stick my neck out and invite error.

8 I would take Mr. Kaufman's position and suggest to
9 the Court that if, in fact, Mr. Correa is facing murder
10 charges or may be facing murder charges in California, the
11 Court ought to consider that and go with the low end of the
12 Guidelines, bearing in mind there may be further sanctions
13 down the road. That's kind of an awkward twist on this
14 whole thing, but I'm trying to take his energy and turn it
15 around, use it to our advantage. The cow is out of the barn
16 so it's there before the Court. But beyond that, I would
17 ask for the low end of the Guidelines, Your Honor.

18 THE COURT: Thank you very much, Mr. Lee. I
19 appreciate your argument.

20 All right. Just for the record, so there's no
21 misunderstanding as to why there was a sidebar between only
22 the Court and Probation Office, that was just to clarify,
23 remind the Court of the statutory maximum that applies to
24 Counts Five and Six of 120 months each, just so the Court
25 properly articulates a sentence when it does articulate a

1 sentence.

2 When we did a discussion of the Guidelines a few
3 moments ago, I said Counts One, Five and Six have a range of
4 168 to 210. Technically that's correct for a Guideline
5 calculation, but it's not correct for purposes of the
6 statutory maximum on Count Five and Six. They can only go
7 to 120.

8 Mr. Kaufman, wasn't there a forfeiture in this
9 case?

10 MR. KAUFMAN: There was, Your Honor, for the
11 firearms in question.

12 MR. LEE: We agreed to that. I think there was a
13 Consent Order.

14 THE COURT: I believe there was. I want to make
15 sure that's referenced in the J&C.

16 MR. KAUFMAN: It's Document 138.

17 THE COURT: Thank you. All right. Mr. Correa,
18 please stand.

19 Mr. Correa, the U. S. Supreme Court, in a series
20 of decisions, has laid out a three-step process that this
21 Court must follow in determining the appropriate and
22 reasonable sentence in each case. This process is an
23 individualized sentencing process. I have to tailor this
24 sentence based specifically on your criminal conduct and
25 your facts and circumstances.

1 The first step in this three-step process is to
2 work through the advisory Sentencing Guidelines. And I do
3 want to say the Guidelines are only advisory. They are not
4 binding on this Court. But the Supreme Court says we should
5 work through the Sentencing Guidelines because they give
6 judges a starting point in the analysis for the appropriate
7 sentence in each case.

8 As the Court has already stated, under the
9 Guidelines you were subject to 168 to 210-month sentence,
10 plus 60 months consecutive to that term of 168 to
11 210 months. The 60 months is a part of actually the second
12 step in the sentencing process.

13 The second step is to determine if a statutory
14 minimum sentence applies as to any of your counts of
15 conviction. And the 60-month sentence does apply to your
16 count of conviction, Count No. 4, violation of possessing a
17 firearm during and in relation to a drug-trafficking crime.
18 So the Court must sentence you to 60 months consecutive;
19 that is in addition to whatever the Court sentences you for
20 the other counts of conviction.

21 The third and most important step is to work
22 through a series of sentencing factors that are set forth in
23 Title 18, United States Code 3553(a). Those sentencing
24 factors were developed by Congress to guide courts in
25 determining the appropriate and reasonable sentence in each

1 case, and specifically to ensure the Court determines a
2 sentence that's sufficient but not greater than necessary to
3 accomplish the goals of sentencing.

4 The Court has conferred all the sentencing factors
5 in Section 3553(a) and it wants to highlight a few that are
6 particularly important in this is case. First the Court
7 wants to highlight the nature and circumstances of this
8 offense.

9 Although this was not the highest ranking
10 conspiracy, in other words, this conspiracy wasn't tied to
11 the highest levels of drug trafficking in Mexico, this was a
12 very sophisticated small conspiracy that involved shipping
13 large quantities of marijuana from the Mexican border all
14 the way deep into United States, smuggling that marijuana
15 into the United States, as far as Union County, North
16 Carolina, some 1500 miles away from the US-Mexican border.
17 And, of course the marijuana was smuggled in in concrete
18 pillars, what looked like statutes, but of course they had
19 marijuana underneath the concrete, so it was a sophisticated
20 conspiracy. And the evidence at trial included not only the
21 marijuana smuggling of August 2009 -- excuse me, of July
22 2008 -- I was looking at the wrong date -- of July of 2008,
23 but it also showed that you were involved in cocaine
24 distribution over an extended period of time.

25 So this, like I say, was a sophisticated and

1 organized drug conspiracy involving at least two controlled
2 substances.

3 And not only is the nature and circumstances of
4 the offense severe, this is a serious offense, and the
5 sentence the Court needs to impose needs to reflect the
6 seriousness of the offense. It likewise needs to promote
7 respect for the law. That includes not only U. S. drug
8 laws, but it also involves laws related to firearms and laws
9 relating to the illegal presence in the United States.

10 I believe virtually all the defendants in this
11 case were undocumented aliens or illegal aliens. I'm not
12 aware of any that were legally within the United States.
13 Mr. Kaufman?

14 MR. KAUFMAN: Well, Anthony Monroe we believe was
15 a citizen.

16 THE COURT: You're right. Anthony Monroe. I
17 stand corrected. Mr. Monroe was legally in the United
18 States, was a U. S. citizen.

19 MR. KAUFMAN: There may have been somebody who was
20 a resident alien, had a Green Card. I'm not sure, though,
21 Your Honor.

22 THE COURT: But the vast majority of perpetrators
23 of this offense, the co-conspirators, were all not paying
24 respect to U. S. law on immigration, as well as on drug
25 distribution and improper or illegal gun possession.

1 The Court has looked at your criminal record and
2 you do have a serious criminal record. The Court is
3 concerned that it needs to deter you specifically from
4 further criminal conduct. As Mr. Kaufman pointed out, you
5 were convicted of assault with a weapon likely to produce
6 great bodily injury in California, and also convicted of
7 inflicting corporal injury on a spouse. Of course, that
8 was -- those crimes were the underlying crimes that resulted
9 in your conviction for possession of a firearm by an
10 individual with a prior domestic violation conviction.

11 So you have a history of committing violent acts,
12 and as the offense conduct sets forth in the Presentence
13 Report, and evidence at trial showed, you were also the
14 enforcer or the security man that used firearms to actually
15 protect this drug conspiracy. So the Court needs to deter
16 you from further criminal conduct.

17 Likewise the Court needs to protect the public
18 from others like yourself who might get into this type of
19 criminal conduct, so the Court is concerned about the
20 general and specific deterrence.

21 Now, with that said, the Court does recognize that
22 you're a relatively young man, and although you are facing a
23 very lengthy term of imprisonment, you should be released
24 from federal prison when you're middle-aged, and you will
25 have a life in front of you. And I truly do hope you focus

1 on your future when you're in the U. S. Bureau of Prisons.

2 The U. S. Bureau of Prisons will provide you
3 rehabilitation. And the sentence I intend to impose should
4 provide you adequate time to go through
5 educational/vocational training. You will have the
6 opportunity to learn English. You'll have the opportunity
7 to complete a high school degree. You'll have the
8 opportunity to go through automobile mechanics training and
9 so many other vocational training programs at the U. S.
10 Bureau of Prisons that when you are released, even though
11 when you're released it is very probable you'll be deported
12 from the United States, wherever you end up, you will have
13 the skills necessary to avoid committing crimes in the
14 future, whether it's Mexican crimes or crimes in the United
15 States. So I do hope you take advantage of the
16 rehabilitative opportunities in the U. S. Bureau of Prisons.
17 That's a sentencing factor this Court has consider.

18 The Court also wants to avoid unwarranted
19 sentencing disparity among similar situated defendants.

20 In this particular case you were, it appears from
21 this Court record, the defendant who is the greatest threat
22 to the safety of the community. Other defendants in this
23 case were low-level players; most of them didn't even have a
24 criminal record. They certainly didn't have any violent
25 criminal record. And many defendants in this case provided

1 substantial assistance to the United States in furthering
2 the government's investigation.

3 You will have a significantly higher sentence than
4 your co-conspirator but that's because of these
5 distinguishing factors, so your sentence I believe will be
6 appropriately comparable based on your role in the offense,
7 as well as your failure to cooperate with authorities or to
8 admit your guilt. So the Court is trying to avoid any
9 unwanted sentencing disparity, and the Court believes your
10 sentence would be consistent based on your role in the
11 conspiracy and your lack of cooperation.

12 With that said, the Court has considered all the
13 sentencing factors. It has highlighted some of the
14 sentencing factors that it believes are particularly
15 important. The Court will now state a sentence that it
16 believes is sufficient but not greater than necessary to
17 accomplish the goals of sentencing. The Court would invite
18 the attorneys to listen to the proposed sentence before it's
19 actually imposed so if there's a legal reason why it should
20 not be imposed, you can so state.

21 The Court will now state its proposed sentence:

22 Pursuant to the Sentencing Reform Act of 1984 and
23 *United States v. Booker*, it is the judgment of the Court,
24 having considered the factors noted in 18 U.S.C., Section
25 3553(a), that the defendant, Asdrubal Rodriguez Correa, is

1 hereby committed to the custody of the Bureau of Prisons to
2 be imprisoned for a term of 188 months on Count One,
3 120 months on Counts Five and Six, all three counts, One,
4 Five and Six to be served concurrently; and 60 months on
5 Count Four to be served consecutively, for a total of
6 248 months.

7 The Court calls to the attention of the custodial
8 authorities that the defendant has a history of substance
9 abuse and recommends the defendant be allowed to participate
10 in any available substance abuse treatment programs while
11 incarcerated, and if eligible, received benefit of 18 U.S.C.
12 Section 3621(e) (2) .

13 Upon release from imprisonment -- one moment.

14 Upon release from imprisonment, the defendant
15 shall be placed on supervised release for a term of ten
16 years on Count One, and five years on each of Counts Four,
17 Five and Six, to be served concurrently. And in accordance
18 with established procedures by the Immigration and
19 Naturalization Act, 8 U.S.C. Section 1101, the defendant,
20 upon release from imprisonment, is to be surrendered to a
21 duly authorized immigration official for deportation.

22 As a further condition of supervised release, if
23 ordered deported, the defendant shall remain outside the
24 United States. Should deportation not occur, the defendant
25 shall report in person within 72 hours of release from the

1 custody of the Bureau of Prisons, or the Bureau of
2 Immigration and Customs Enforcement, to the probation office
3 in the district to which the defendant is released. While
4 on supervised release, the defendant shall not commit
5 another federal, state or local crime, and shall comply with
6 the standard conditions that have been adopted by the Court
7 in the Western District of North Carolina.

8 It is further ordered that the defendant shall pay
9 to the United States a special assessment of \$400.

10 It is further ordered having considered the
11 factors noted in 18 U.S.C. Section 3572(a) that the
12 defendant shall reimburse the United States for
13 court-appointed attorneys' fees.

14 The Court finds that the defendant does not have
15 the ability to pay a fine or interest. The Court having
16 considered the factors noted in 18 U.S.C., Section 3572(a)
17 will waive payment of a fine and interest in this case.

18 Defendant shall forfeit the defendant's interest
19 in any properties as identified by the United States, and in
20 particular by the firearm possessed in furtherance of the
21 crimes for which the defendant was convicted, and the Court
22 incorporates by reference the Preliminary Judgment of
23 Forfeiture, which is Document 138 in the CM/ECF file.

24 Payment of the criminal monetary penalty shall be
25 due and payable immediately. The Court has considered the

1 financial and other information contained in the Presentence
2 Report and finds the following is feasible: If the
3 defendant is unable to pay any monetary penalty immediately,
4 during the period of imprisonment payment shall be made to
5 the Federal Bureau of Prisons Inmate Financial
6 Responsibility Program.

7 Upon release from imprisonment any remaining
8 balance shall be paid in monthly installments of no less
9 than \$50 to commence within 60 days after release from
10 imprisonment until paid in full.

11 Throughout the period of supervision the probation
12 officer shall monitor the defendant's economic
13 circumstances, and shall report to the Court with
14 recommendations as warranted any material changes that
15 effect the defendant's ability to pay any court-ordered
16 penalties.

17 Now, I ask counsel -- first I should ask Mr. Lee:
18 Would you like to recommend a place of designation?

19 MR. LEE: Probably some place in Texas or
20 California, some place close --

21 THE COURT: To the border.

22 The Court would recommend to the U. S. Bureau of
23 Prisons that the defendant be designated to a facility close
24 to the US-Mexican border.

25 Now I ask counsel if there's any legal reason why

1 this sentence should not be imposed as stated?

2 MR. KAUFMAN: No, Your Honor.

3 MR. LEE: If I could just say for point of
4 clarification, Your Honor, during the Court's pronouncement
5 of the judgment, prospective judgment, the Court indicated
6 Mr. Correa, one of the factors the Court would consider in
7 crafting the sentence was that he had not cooperated but
8 pled guilty. I'm not quite sure if I heard that correctly.
9 I think the Court was trying to explain why the other
10 sentences were lower.

11 THE COURT: Well, but he started to cooperate,
12 right?

13 MR. LEE: No, he did not.

14 THE COURT: He never started to cooperate. That's
15 what I thought, he never cooperated.

16 MR. LEE: He didn't.

17 THE COURT: There was a moment I thought -- you
18 were not his first attorney?

19 MR. LEE: I think I've always been his first
20 attorney. I didn't look at that closely but --

21 MR. KAUFMAN: It's probably two sides of same
22 coin. It's not that he's getting a greater sentence because
23 he didn't cooperate, it's that many of the other defendants
24 that are --

25 THE COURT: If I misstated, it's correct -- the

1 other defendants -- a certain number of the defendants
2 received 5K motions. Other defendants qualified for the
3 safety valve. Your client could not possibly qualify for
4 the safety valve because of his criminal record, and he did
5 not provide the substantial assistance that would qualify
6 him for a downward departure.

7 MR. LEE: And I just want to clarify for the
8 record the Court wasn't penalizing --

9 THE COURT: No. You are absolutely correct, and
10 thank you for that clarification. Their sentences -- their
11 Sentencing Guidelines ranges came down, not that his went
12 up.

13 MR. LEE: I just wanted to clarify that, Your
14 Honor.

15 THE COURT: Thank you. That's why the Court
16 doesn't believe they're dissimilar in their analysis. The
17 process was the same in an analysis of all sentences.

18 The Court actually did make a technical statement,
19 a misstatement, as to supervised release for Counts Five and
20 Six. Count Four the Court properly said the defendant would
21 receive five years of supervised release. The Court also
22 said five years for Counts Five and Six, but Counts Five and
23 Six have a three-year cap on supervised release. So let me
24 restate that one sentence.

25 Upon release from imprisonment, the defendant

1 shall be placed on supervised release for a term of ten
2 years on Count One, and five years on Count Four, and three
3 years on each of Counts Five and Six, all to be served
4 concurrently.

5 All right. Mr. Correa, you can appeal your
6 conviction if you believe that your guilty verdict was
7 somehow unlawful or there was some defect in your trial or
8 proceeding. You also have a statutory right to appeal your
9 sentence under certain circumstances, particularly if you
10 think the sentence is contrary to law.

11 Any notice of appeal must be filed within ten days
12 from the date of written judgment in this case. This Court
13 hands down written judgment usually one to two weeks after
14 this sentencing hearing. If you're unable to pay the cost
15 of appeal, you may apply for leave to appeal no cost to you.
16 If you so request, the clerk of court will prepare and file
17 a notice of appeal on your behalf. The Court recommends you
18 talk to Mr. Lee about these appeal rights and procedures.

19 Do you understand these appeal rights and
20 procedures as the Court has stated them to you?

21 DEFENDANT CORREA: Yes.

22 MR. LEE: I said this for Mr. Correa, but I will
23 file the notice, since this was a jury trial, and I just
24 wanted him to know that walking out that I will not let this
25 slide.

1 THE COURT: All right. It appreciate it. Thank
2 you, sir.

3 Sir, you will remain in the custody of the
4 U. S. Marshal Service here in a local facility pending
5 transfer to the U. S. Bureau of Prisons. That process
6 usually takes 30 to 60 days. At the end of the service of
7 your sentence in federal prison, you will be transferred to
8 the Immigration and Customs Enforcement Agency, or bureau,
9 for a purposes of a deportation hearing. That transfer is
10 not something that will move from one federal facility to
11 another; rather, it will be a paper or administrative
12 transfer but you will still probably be housed at the
13 federal facility that you are -- that you were serving in
14 during the term of your sentence.

15 Do you have any questions for me, sir?

16 DEFENDANT CORREA: No.

17 THE COURT: Any questions for counsel?

18 MR. KAUFMAN: No, Your Honor.

19 MR. LEE: We have none, Your Honor. Thank you.

20 THE COURT: Then the sentence as stated and as
21 amended is hereby ordered and this case is concluded.

22 (Hearing conclude 2:53 p.m.)

23 - - - - -
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25

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA

3 CERTIFICATE OF REPORTER

4 I, JOY KELLY, RPR, CRR, certify that the foregoing
5 is a correct transcript from the record of proceedings in
6 the above-entitled matter.

7
8 S/JOY KELLY

9 JOY KELLY, RPR, CRR
10 U.S. Official Court Reporter
Charlotte, North Carolina

Date _____